Economic Club of New York

120th Meeting

30th Anniversary Dinner

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Hotel Astor
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MR. ELY: One hundred and nineteen times the Economic Club has met in this hotel, and as individuals we have eaten more than was good for us, and as to what we have drunk--I forbear to make any statements. But we owe a great deal to the Hotel Astor. When the Economic Club was founded, W.C. Muschenheim, founder of the Hotel--he is dead, but his younger brother is still alive--said to me, "I would like to have my hotel an intellectual center--and the Economic Club was formed!

Introduction

Paul C. Cravath, President

Gentlemen, the subject of tonight's discussion is before you on the program, and I am informed that the best qualified man in Washington to defend the President's plan is with us here, tonight, the honorable Robert H. Jackson, Assistant Attorney General of the United States. (Applause) Before being swallowed up with the New Deal, Kr. Jackson was a distinguished member of the New York Bar--but, at all events you are about to hear, I am sure, as I am told by well informed persons in Washington, the best qualified defender of the President's plan. Mr. Jackson!

First Speaker

The Honorable Robert H. Jackson

United States Assistant Attorney General

Mr. Chairman, Senator Burke, Mr. Aldrich, Mr. Mills, and honored Guests of the Economic Club: I know exactly how Daniel felt on a certain famous occasion. And I want to say one personal word before starting on my subject. Owing to a long-standing engagement, I must leave here at the conclusion of my statement, but I have arranged with Senator burke, that he will endeavor to answer all of the questions from both sides. He has been listening to presentations from both sides for so many days now, that I am sure he will be able to do it. I also want to explain that I do not leave out of any lack of respect for Senator burke, for whose sincerity and ability to defend his convictions I have the greatest respect.

. . . Mr. Jackson presented his paper, which is included at this point. . .

NOTE: PRESENTATION NOT IN TRANSCRIPT

PRESIDENT CRAVATH: I am sure we will all agree that Mr. Jackson has given us a very fine address. He may not have convinced us of the soundness of his views, but of his own ability he has convinced--he has me, at least.

When I took this office, I promised I would not take advantage of this position to express my own views. I profess it is very hard tonight for me to keep that promise, but I am consoled by the thought that the next speaker can express those views better than I can. Before he was elected to the House four years ago and to the Senate two years ago, he was a distinguished practicing lawyer in his own State of Nebraska. He has now been in Washington long enough to know what he is talking about, and it is my guess that he will never be in Washington long enough to forget that he is primarily a lawyer.

I have the great honor and pleasure to introduce to you, Senator Edward R. Burke! (Applause)

Second Speaker

The Honorable Edward R. Burke

United States Senator

Friends of the Economic Club and Guests: I made a proposition to my good friend Bob Jackson while we were eating dinner. He broke the news to us that he had to leave to attend a meeting called by the Labor Council, I believe, at Carnegie Hall, and he went on to say that he judged that he would have a happier time there. My proposition to him was this: that if he and I both are interested on opposite sides of this proposal, rather than just getting up to talk to a crowd that he stay here and let me go over to Carnegie Hall. But, the proposal was not accepted.

This idea of changing the rules of the game, and packing the Court, seems to be spreading a good deal. A few weeks ago in response to a telephonic call from the Secretary of this organization, I agreed to come here to address you tonight, and it was stated to me at that time--and in fact I received a few days later a printed program bearing out the correctness of it--that one of my distinguished colleagues in the Senate would present here tonight what arguments there may be in favor of the President's proposal, and I come here tonight and find instead that the rules of the game were changed right in the middle of the game, and this high-powered and lovable and attractive and able first Assistant Attorney General of the United States is drafted instead. But I am glad that Mr. Jackson was here, and I am sure that he has said everything that it is possible to say in defense of the President's proposal.

Just one other word on that point: When we were invited to come here tonight, I had no means of knowing whether there to be in addition to a visible audience, a radio audience of undetermined numbers of listeners. Of course, we have to have a different technique with the radio--you need a prepared speech that you can deliver in a in a microphone in exactly so many minutes and seconds, so I spent a little time and prepared such a speech. I am delighted to know, however, that these are merely amplifying instruments here, and that my entire audience is right here before me, and so, unless there is a timekeeper, who is going to knock on the gavel just at a certain point, I am not going to confine myself closely to the prepared speech. I will follow the outline of what I had in mind, of course.

First I would like to say, however, a few words about various matters that were suggested to me by the presentation of Mr. Jackson. I told him my style would be greatly cramped if he were to leave, but he said he considered me a fair man, so I will try to be fair in reference to what he said. But there is one point I do not want to let pass at this time for fear I might overlook it later.

I hoe that every labor journal in the United States, that every labor leader--and all of the leaders of organized labor, of course, are 100% behind the President's proposal--I hope everyone of them will have occasion to know that tonight, before this gathering, the First Assistant Attorney General criticized the Supreme Court of the United States because it declared unconstitutional the Kansas Industrial Labor Relations Act.

Well now, a few days ago, William Green, President of the American Federation of Labor was present at one of the hearing before the Senate Judiciary Commission, and some Senator asked him, after he concluded his opening presentation, if it were not true that the Supreme Court of the United States on may occasions had been the last bulwark of refuge to organized labor in this country, and Green said he did not remember any particular cases where the Supreme Court had been of much help to him. Then he was asked, "You were not entirely in favor of the Compulsory Arbitration Act, then, which Henry Allen, Governor of Kansas, caused the Kansas Legislature to adopt, a number of years ago." And at once Green put on his fighting clothes. "That was the worst bill that anyone in the United States had ever passed. It was that measure

that drove Allen out of public office and into retirement as a private citizen." I couldn't begin to tell you of the strong language that Green used in expressing his opposition to that Act which called for compulsory arbitration of labor disputes, and he said, "The Court did help us out in that matter, but that was one of the very few."

But here Jackson comes along and says that here, apparently was a case where the Supreme Court usurped some power--depriving the State of Kansas of the opportunity to make of itself an experiment, providing for the country an experiment station to carry out this interesting proposal.

I am not discussing whether it was a good or a bad Act; that is immaterial, but I believe it would be a sobering thought to labor leaders if they knew that one of the most able proponents for the President's proposal is going about the country berating the Supreme Court because it declared unconstitutional that Labor Act out in Kansas, which organized labor does not like at all.

Mr. Jackson complained rather bitterly because some of the acts of Congress--particularly in the last four years--have been challenged in the courts, and used the expression, as I recall it, that practically every act that was passed was brought to the courts. However, I think we would all agree that it is the right of the citizen who feels that in any respect his individual importance, property or any other kind of rights are being unconstitutionally interfered with, to go into the courts to prove that. And with what semblance of good grace can anyone connected with this administration complain because citizens take matters into the courts, when we have before us

for instance, this example he referred by name to, the Guffey Coal Bill. You all recall the circumstances--when it was in the House, and the Ways and Means Committee of the House conferred on the matter, and the Senate committee had grave doubts about it, and so on. And I may interject that when it came to the Senate one of the Senators requested Homer Cummings to express whether it was Constitutional, which request the Attorney General declined to express himself on. But going back to the House--when it was before the sub-committee and the sub-committee was in such great distress, you will recall the letter the President wrote Hill, in which he said in short, although I think I can quote the exact language, because at that time it was indelibly in my mind, he said: "Regardless of any doubts as to the constitutionality of this measure, however reasonable those doubts may be, I trust your sub-committee and the House and the Congress will pass this measure."

Now if the Chief Executive of the united States is putting it up to Congress in that light--and I am not challenging the entire good faith of the President or those who voted for the measure--I voted against it because I didn't believe in it--but if that is to be the attitude of the Executive and Legislative Departments, that measures should be passed without any regard to its constitutionality, with what semblance of good faith can anyone complain because citizens take the matter into the courts in the normal way, and take matters to the Supreme Court for final decision?

But Jackson would say, "But there is great delay--it takes a long time." Unfortunately, I would say, referred to the delay in the NRA decision. It is all a matter of record-I am not giving you my opinion--but as a matter of official record the Department of Justice was solely responsible for bringing that to the Supreme Court for final decision. In fact, one case after another was on its way to the Supreme Court--there could have been a decision months, a year, or more than a year before the decision was finally reached, except for the fact that Jackson's predecessor, acting, no doubt, with his superior, decided, when the case came up, almost ready for trial, to withdraw those cases and wait for some other case to come up. So I say it is bad judgment for anyone connected with the Department of Justice to complain of the delays in these matters by the Supreme Court.

But after all--and at this point I would like to give you an illustration that was used yesterday before our Committee, by Mr. Raymond Moley, who made an earnest, strong presentation, logically clear-out, so clear, in fact, that it seemed to me that any reasonable member of that Committee or of the Congress, or any reasonable citizen of the country ought to see that Moley was speaking the real verities, the truth in the abstract, as to the President's proposal. He said that there is complaint because these matters, these parts of this legislative program are taken into court and that there is uncertainty about it. That was merely the just of Jackson's argument, tonight, that the program for the betterment of the country is being interfered with because these matters are taken into court, and there is indecision.

Moley, in his talk, said something like this: Suppose you are at the American League Ball Park, and Babe Ruth is at the plate, and the pitcher put one over that he likes and the Babe makes one of his famous swings at it. There is uncertainty then, while the ball swings through the air. The ball may go too far to the left or too far to the right, as the case may be, and get outside the foul line. We have to have an umpire. Everyone watches the umpire to see what his decision is going to be. And that is the exact case before the Legislature. Congress reacts sometimes, advised by the President, not to pay any attention as to whether the matter is unconstitutional or not, and so we have to wait until the umpire decides. Mr. Moley didn't give this, but I will state this, that the right answer to that situation, the right way to do away with all uncertainty in the ball game can be transposed to our National life, and we might say that the thing to do would be to have a white line marked out there at all , but a variable line, and have the linemen and the umpires ready, and if the crowd in the stands are in the proportion of, say, 27 to 16 in favor of the side on which the Babe happens to be, then just have the linemen ready with their line and when the ball soars out, just let the linemen move the line over far enough so it will be all right. (Laughter)

But I think I will not go on along that line, although I may interject something else as I go further. But this is a tremendously serious matter. For the last three weeks, as a member of the Judiciary committee, I have been listening all day to witnesses for and against this proposal. I think I should, however, in staring, make a few explanations--I don't want to deceive anyone as to my position. (Laughter) I think I ought to let you know just where I stand.

I have been a Democrat all my life because I believe in the principles--or have believed in the principles of the Democratic Party. I was a very ardent supporter of President Roosevelt in the campaign of 1932, and I supported him in the campaign of 1936. I was at Philadelphia when the Democratic National Platform was drawn up, but prior to that I had attended a great many meetings of different groups of United States Senators and others, where this whole problem was presented and discussed, and the administration leaders in the Senate were present on all of those occasions. There was a great deal of discussion as to whether it would be wise in the Democratic Platform for advocate amendments or any specific amendment to the Constitution. There was a difference of opinion. Some felt that the matter should be passed over rather lightly; others felt that the part should come out definitely in favor of some amendment to the Constitution that would submit to the people the question of whether they wanted to vest additional powers in Congress to regulate agriculture, industry, and labor; wages and everything of the kind. You know the result that was finally reached.

But what I want to say is this: that in many of those conferences, and in no conversation with any member of the House or Senate, did I ever hear the suggestion that the way to handle this matter would be to create new positions on the Supreme Court bench, filling it with men who could be depended on to reach a certain decision. And that was the position-- and the election was won on it; if certain things were needed in the Constitution, they would be forthcoming. And then Congress assembled, and even before the gavel was pounded, Bankhead, the speaker of the House, arrived in Washington and announced that he thought the right procedure for Congress to

follow would be to give early and earnest consideration to the question of submitting to the people an amendment or amendments to the Constitution, to give the people the right to pass on the question of whether they wanted to vest additional powers in Congress. He was followed shortly by Majority Leader, Senator Robinson, in the Senate, who said that he thought the Senate Judiciary Committee should give early and earnest consideration to that question as to whether we should have an amendment or amendments to the Constitution. And then we moved on a little to the fifth of February, and on that day, as I sat in my seat in the Senate, and the officials came to the door, and the Vice President announced, "We will receive a message from the President of the United States," and the message was sent up and read, this whole plan for the first time was laid before the Senate. And I can say to you authoritatively, that no one in the Senate of the United States, other than the Chairman of the Judiciary Committee, Senator Ashurst, the Vice President and the Majority leader, Senator Robinson, had any idea when that message was presented, when the Clerk started to read that message, what the message contained at all, and those three gentlemen had known it for less than 60 minutes. I wanted to tell you my position. The Clerk had not proceeded very far before I knew that as far as I was concerned, that this was a matter that I must fight against with every ounce of power that God might give me in the struggle. (Applause) I have only one difficulty in this whole matter, at all, and that is to restrain myself to the extent of being willing to grant purity of motives and some degree of sense to those who take the opposite view.

The bald proposition that is now submitted to us is this: If a President of the United States does not like the decisions of the Supreme Court, shall he be permitted to order an enlargement of the Court, so that he may name a sufficient number of additional justices, to insure the kind of decisions which he wants?

This all there is to this proposal. There has, to be sure, a lot of window dressing--I will talk of that in a moment. What I would like to do is to discuss this subject under three main heads, and I will not be long. I understand there may be members here who would like to ask questions and I would rather attempt to answer questions and close this part of the program. And in doing that I will have in mind that Mr. Jackson is gone, and I will try, if I can find anything to say on the other side, to present it to you, but I would like to consider with you for just a few minutes, three propositions in reference to this proposal, and I will name them now:

First: May we consider some of the specious secondary arguments offered in support of this proposal.

And then I would like to pass on from that to show you what I consider to be the entire lack of merit in the primary criticism which has been offered so vociferously and so repeatedly that I am afraid a good many people in the country have come to believe there may be some merit in the proposal.

Third, and briefly on that, I would like to demonstrate how radical a departure from American traditions this proposal is, and how fraught with danger to the future welfare of our country.

What are some of these secondary arguments, which I declare to be wholly fallacious? There are many of them--off-hand I could mention a dozen or more--but some four or five occur to all of our minds readily. This is a part of the window-dressing of the program.

First we have the suggestion that the complaint is very bitter that during four years since he was inaugurated, President Roosevelt has not had the privilege of name a single justice of the Supreme Court. Divine Providence has been unkind to our President, we are told, because during this whole period no Justice of the Supreme Court has harkened to the call of the Grim Reaper, or been intimidated by a campaign of vituperation to voluntarily retire from office. I quote now from the Attorney General of the United States:

"George Washington appointed twelve members of the Supreme Court/ Jackson appointed five. Lincoln appointed four. Harrison appointed four. Taft appointed five, and elevated still another to be Chief Justice. Harding appointed four, and Hoover appointed three. President Roosevelt has appointed none at all."

To like effect, a witness called by the Attorney General - now I should stop to say these hearings are very interesting, in Washington. The Senate Judiciary Committee is a very impartial body of

18 members, and we decided to have hearings as a full Committee, on this matter. Some members are for the bill and some members are against it, and we were to call anyone in who had any ideas on the subject, and hear from them. At first we had an informal discussion, and it seemed likely that those for the bill should come in first. Then we said that we would like an interruption and for two or three days we could call witnesses opposed to it, and then those for the bill could make up their case. We met on the first day, accordingly, to hear the first witness. We met in the Senate Caucus Room--there is a great crowd there every day--a hundred newspaper men, or thereabouts, and others; but here, in this section, is the office of the Attorney General. Now I am not complaining, although it is interesting. Joseph Keenan, one of the Assistant Attorney Generals, and an intimate friend of mine is there in charge of the witnesses for the proponents of the bill. If we want to know the next witness we don't go to anyone favoring the plan--we go to Keenan, to find out who he is going to call next--I have counted twelve members of the Attorney General's office who have been there at one session, and they are in charge of the proceedings. I give that only in explanation of the language used here.

To like effect, then, a witness called by the Attorney general to appear before the Senate Judiciary Committee last week was Mr. Irving Brandt. In a recent editorial from his pen, in the St. Louis paper we learn that--and I quote:

"President Roosevelt is the only President who has occupied the White House in forty years, in whose administration there have been no resignations from the Supreme Court."

Mr. Brandt goes on toe show at great length that there is a conspiracy among the conservative members of the Supreme Court--he doesn't exactly us the expression that they have "taken the blood oath to the effect that no one will resign"-- but he goes practically to this point, and so he repeats the challenging inquiry of the Attorney of the General--quoting again from the Attorney General:

"Upon what grounds do the opponents of the President justify the claim that he shall not perform the duty that all other presidents have performed?"

Would it not be as sensible to say that since some other presidents have had the duty of serving as Commander in Chief of the armed forces of this country in times of war, we should go out and look for a fight in order to give President Roosevelt the opportunity of performing a similar duty?

So far as the Attorney General is concerned, I think the country is satisfied with the comment of Senator Carter Glass, that his argument does not go far in proving that we need more judges on the Supreme Court, but it does show very conclusively that the country needs a new Attorney General. Of Mr. Irving Brandt need anything more be said, in answer to his whole argument for adding six members to the Supreme Court than to quote his own words, from a book he wrote

less than a year ago, wherein he summed up his case for a liberal majority on the Court by saying that, however secured, it must come, and I quote his own words:

"Not by enlarging the Court even though Lincoln did it. Establish such a principle and the Supreme Court will become a political chameleon, changing color with every shift in party control of the government."

If this ludicrous argument were presented only by irresponsible people it would not be disturbing. But when I find it repeated seriously in a newspaper of which I have been a constant reader for a quarter of a century, and which has been almost a bible to me, I am profoundly alarmed. I quote from a recent issue of the Springfield, Massachusetts, Republican:

"President Roosevelt has this far had no opportunity to nominate a single member of the Supreme Court, although President Hoover had the naming of three justices and President Harding four. Why shouldn't he have the privilege of selecting two, or even three, justices for service on that bench--men selected, frankly, in accordance with the dictum of Abraham Lincoln, because their sympathies and even opinions were known t be in accord with the President's general program?"

To me that is heresy in the N-th degree, that anyone, the Attorney General, Mr. Irving Brandt of the Springfield Republican, or anyone, could say that that is justified--and I fail to find language for the expression of my opinion on that view.

Every member of the Committee is asked, "Don't you think the President of the United States has the right to talk to the prospective nominee of the Supreme Court to find out, of course, his views"---and the witness says, "Yes, certainly." But these gentlemen do not draw any distinction. Of course the President has the right to examine into the qualifications and the views of the men that he is to nominate, and when the nomination goes to the Senate I am certain that it is their duty also to examine into these qualifications and views, not in either case, with the idea of ejecting a man for expressing his views in one way or another, but to find men who are open minded and willing to take that high office and perform that duty of deciding a case upon the law as applied to that particular case, but I say that some of the members of the Committee, and this once great newspaper, the Attorney general, seemed far afield when they have said that that offers any justification to now create new and additional judgeships and then follow the same process in putting on the Court, men whose opinions are somewhat predetermined. There is all the difference in the world between those two situations.

And so I say has it come to pass that the Supreme Court of the United States is to be considered a plaything, a rubber doll, to be stretched or compressed to suit the whim of a President, and to be thrown in the corner if it does not respond in a manner to suit its childish owner? I say that the

Attorney General of the United States, and this once great newspaper, demonstrate a total lack of comprehension of the function of an independent judiciary in a federation of sovereign states, operating under a written constitution, wherein the people themselves have made known the limited powers which they have chosen to vest in the federal legislature and executive, and have placed "the judicial power" in one Supreme Court in order to be sure that the other ten departments stay within their granted powers. Compared with the utterances from these supposedly responsible sources, I would consider harmless indeed the outbursts of the most rabid communist on the street-corner.

Another argument, much overworked it seems to me, is that this would not be a dangerous thing to let the President add in one fell stroke six members to our high court, because he could be depended on toe nominate only honorable men who would serve without any strings attached, and in any event the Senate must confirm. Examine this proposition. See whether in your judgment we would hereafter have any assurance of a Court that would dare to act as a wholly independent tribunal of justice in any case before it in which the majority for the moment might be interested. And I know the President says he would select "free men," and that it is hoped they will do the very definite and well understood job they are supposed to do, by reason only of the fact that they have come fresh from the people, and not because of any promise exacted. Certainly no one expects that any President of the United States would now, or ever, ask from any nominee, or receive, a positive commitment. Who is so foolish as to consider that anything of that kind would be at all necessary? If this bill were to pass, which God forbid, and if you

were interviewed by the Attorney General and the President as a possible nominee for one of the six places, and if you felt that in all matters you did not see eye to eye with the President, if you were conscious that you could not meet the test laid down by the President himself in his illegal removal of Commissioner Humphrey from the Federal Trade Commission, that your mind did not go along with his mind in all respects, what would you do? You would either decline the nomination outright, or, making known your views, would never have the occasion to do so. All the world would know that the law was passed, and those six men nominated, for one reason, and one reason only. Because the President is dissatisfied with certain decisions of the Supreme Court in the matter of the interpretation of constitution limitations which the people have placed on the exercise of power by Congress and the President. A wise professor of government in a great new York institution of learning stated the matter well by saying: "If these men are really the kind whose judicial work will be directly governed by their political and economic affiliations, who will, in short, live up to the implied understanding which led to their appointment, they would appear to be unfit for judicial service.

I do not charge or entertain the thought that if this bill were to pass, the President of the United States would examine anyone, Donald Richburg, or Mr. Jackson, or anyone by saying, "I am going to send your name up to the Senate but I want you to tell me definitely that you will vote for the New Deal--the new NRA--or the Guffey Coal Bill, "and son on. Of course that is silly to even suggest it.

But what I say is this, there would be an implied understanding that no man in the United States of America could permit his name to be submitted to the United States Senate by the President or to be acted upon favorable by the Senate, without knowing that this law was passed, and that he was selected and nominated and confirmed for one reason and one reason only, and that was to interpret the Constitution of the united States in a very different way than the majority has interpreted it in the last few years.

And I know it is said that the nomination, when made, must be confirmed by the Senate. Certainly, but with all due respect for the honorable body in which I am proud and happy to serve, for what may very well be a limited term, I ask you, if a Senate, which would pass such a bill to begin with, because the President demanded it, would not be a poor refuge, indeed, for the maintenance of the principle of a wholly independent judiciary. But I must pass on.

It was first urged that the real purpose behind this startling proposal, the like of which no man ever before dared breathe in this country of ours, was that many of the justices are old men, and that approaching senility prevented them from keeping the work of the court up to date. This sorry excuse was so quickly blown into thin air, that all that remains of it is the natural suspicion that pervades the mind of every reasonable person to whom a proposition has been submitted with an utter lack of frankness.

Old men, yes, but the world owes a debt of gratitude to old men, who in the ripened wisdom of age have rendered their best service to humanity. Gladstone was Prime Minister of England at 83, Clemenceau the most powerful statesman in Europe at 79. Victor Hugo, titian, Goethe, and scores of others, enriched our literature and art when long past three score years and ten. Justice Holmes led all the rest when approaching 90, and today Justice Brandeis at 80 must bear in silence the taunt that only youth can be trusted. A taunt from a President who came post-haste to my own state of Nebraska last October on the eve of election, to acclaim my noble colleague, Senator Norris, approaching 76, as a Major Prophet, whose continued service in the Senate was a matter of vital importance to the entire nation.

But enough of this, the reports of the Attorney General himself show that the Supreme Court is well abreast of its work, that every case that comes before it is promptly heard and disposed of. Let o one be deceived into thinking that by adding to the honorable court six embryonic lawyers, or immature laymen, we would do other than to lower immeasurable the character of the work, and the deserved respect enjoyed by this great tribunal.

One other argument is being very strenuously urged. Recognizing that the President heroically led the nation out of the depths of a depression, that day by day he inspired our people with renewed hope and confidence, to such an extent that he won an overwhelming reelection, it is contended that a decent sense of gratitude and loyalty should cause us now to follow his bidding without fear or question. I subscribe to no such doctrine as that. That way lies certain trouble. I

prefer the noble sentiment expressed on the floor of the Senate by the elder La Follett, in these words:

"Mr. President, (addressing the Chair): I had supposed until recently that it was the duty of Senators and representatives in Congress to vote and act according to their convictions--quite another doctrine has recently been promulgated--and that is the doctrine of 'standing back of the President' without inquiring whether the President is right or wrong. For myself, I have never subscribed to that doctrine and never shall. I shall support the President in the measures he proposes, when I believe them to be right. I shall oppose measures proposed by the President when I believe them to be wrong."

This proposal I know strikes at the very heart of our independent judiciary. As Lord Bryce pointed out long ago, the failure of the Constitution to fix the number of judges that should comprise the Supreme Court is the one crack in the armor through which some day there might enter the sharp blade that would cause the proud structure of our constitutional democracy to receive its fatal thrust. May god grant that it may not come in our day!

The arguments which I have so far attempted to refute, I designate as secondary. All recognize them as mere window dressing. Driven from cover, the supporters of the President's rash proposal, and the President himself, tell us that the country faces a crisis so imminent that we cannot wait to follow the orderly method of submitting to the people a constitutional amendment.

That the federal Congress and the President must have more power and must have it at once. That the states are impotent, that local governments are helpless, that only by centering in Washington the full right to control, to the minutest detail, agriculture, industry, labor, business and every activity of our daily lives, can we be saved. You can understand how it would be difficult to draw an amendment to the constitution to cover all this and have a chance of its being approved by the people. That is the reason the president does not look with favor upon the amendment process. He knows that in spite of the love and admiration which the American people hold for him, they would never consent to turning over to him, and the Congress, all of the power which he thinks it necessary to exercise.

There would be no difficulty in the way now except for the Constitution. That instrument limits the powers which the President and Congress may exercise. It provided a method by which the people, at any time that they see fit, can remove any of those limitations that they desire. I have already indicated the objection to proceeding by the amendment process. Last June the Democratic National Convention thought that was the right way to meet the situation, by clarifying amendments. In January, when Congress assembled the Democratic leader in the House and in the Senate, publicly announced that the program would be to consider what reasonable and proper amendment should be submitted to the people for approval.

The President, having approved the Platform, said nothing during the campaign, at the opening of Congress, and not until the fifth of February. He then proposed a scheme, which to quote the language of Professor Robert E. Cushman, "has a certain child-like simplicity."

The Constitution, it is true, does contain these limitations which the people wrote into it. But we have just come from a great victory at the polls. The Constitution cannot enforce itself. Why bother to go back to the people and ask them to remove the limitations? Why not infuse some new blood into the Supreme Court, so that every member on the Court, new and old alike will know that by every conceivable construction it must be held that Congress and the President have the powers which they want? Of course, no judge would be expected to say that black is white, or that a negation is an affirmation, but no more of this following established precedents. Never again have any judge on that Court giving heed along to his own conscience, his own judgment and his won powers of reasoning. If the President says that a certain type of legislation is necessary, and his Congress passes it, let that be enough, unless it be so clear a violation of the Constitution that a babe in arms would so declare.

What is this crisis brought on by the interference of the Supreme Court in the powers which the President thinks he and Congress ought to be free to exercise? It may be said in general that the country is showing steady and wholesome improvement, except for wide-spread strikes. But there are no strikes when prices are falling and everything is on the down grade. It is only in a

rising tide of prosperity that labor asserts that it is not receiving its fair share of increasing profits. But let us be specific.

I think that everyone would agree that unemployment is the gravest problem of all. Congress has given the President a blank check for all the billions for which he asked and told him to provide relief and work-relief in whatever manner he saw fit. Has any ruling of the Supreme Court hampered the President in administering to the needs of our unemployed? Not one.

Relief to home owners and farm owners, the Home Owners Loan Corporation was established and the Farm Credit Administration built up to extend the helping hand of credit to home owners in distress, to farmers burdened by debt. Has the Supreme Court found any lack of power in the president and Congress to do these things? Not once.

Bank Depositors, one of the outstanding achievements of the Roosevelt Administration has been to place the banks of the country on the soundest basis in history. Bank deposits have been insured to the extent that never again do we need to fear the terror of bank failures and heartbreaking losses to depositors. Has any decision of the Supreme Court hampered in the slightest degree this statesmanlike handling of a vital problem? Not in the slightest.

Currency and Credit, here again we find that Congress and the President have worked out a far-reaching program with which the Courts have had nothing to do.

Regulation of the Stock Exchanges, in this field and with the entire subject of control of the issuance of securities, only the most carping critic would dare to claim that the Supreme Court has been a stumbling block.

Flood control, hundreds of millions of dollars have been voted by Congress to further the most extensive program of flood control since the earth took shape and was inhabited by human beings. Has the Supreme Court blocked, or hindered the execution of these plans? Not in the slightest degree.

I could go forward with practically every problem that the nation is trying to solve and demonstrate that Congress has already almost unlimited power to approach the solution of these matters in a national way. Sometime Congress acts hastily, and ill-advisedly, and must retrace its steps. But, as the present Solicitor General so well stated it, there is a "vast reservoir of unused power" ready at hand to be tapped, if Congress will but proceed in a proper, sane and reasonable manner. If there be such matters as regulation of minimum wages, hours or labor, and similar subjects, which the framers of the Constitution clearly did not intend to vest in the Federal Government, and if the people now desire to place that power in Congress, then let the people speak. Let us not attempt to amend the Constitution without action by the people. This proposal to add members to the Supreme Court in sufficient number, and of pre-determined views, in order to wipe out the limitation which the people wrote into that document, is the most flagrant

example in history, at least in American history of an attempt to strip from the people the right to say what powers they want to vest in their Congress and in their President.

In conclusion, does not all this demonstrate a radical departure form American traditions? The camouflage with which the proposal was shrouded has been dissipated. The naked proposition that the Supreme Court has blocked the President and Congress in their efforts to solve national problems has been examined and found to be without merit. If there is to be a new and undreamed of concentration of authority at Washington, so that Congress and the President may be forced to direct the lives of 130 million people without check or restraint of any kind, then let the people pass on the question as to whether they want to abandon their Constitution, abolish an independent judiciary, and vest authority unlimited and unchecked in the President and his Congress.

May I leave with you these words of Woodrow Wilson? No reactionary he. And I quote:
"It is within the undoubted constitutional power of Congress, for example, to overwhelm the opposition of the Supreme Court upon any question by increasing the number of justices and refusing to confirm any appointments to the new places which do not promise to change the opinion of the court. Once, at least, it was believed that a plan of this sort had been carried deliberately into effect. But we do not think such a violation of the spirit of the Constitution is possible simple because we share and contribute to that public opinion which makes such outrages upon constitutional morality impossible by standing ready to curse them." (Applause)

PRESIDENT CRAVATH: You have carried your audience with you. I am sure we are grateful to the Senator for having come to enlighten us on this great subject, which is, as you know, so near to the heart of us all.

Mr. Ely, have we any time for questions?

MR. ELY: I am afraid not.

SENATOR BURKE: That was part of my strategy.

PRESIDENT CRAVATH: And now the second part of the program tonight. Gentlemen, this is the Thirtieth Anniversary of the birth of the Economic Club of New York, and there is some ceremony attached to it, and some distinguished guests who will say a few words. I propose to turn this meeting over to the Grand Old Man of the Economic Club, Mr. Ely. (Applause) At least, you didn't know he was an old man, and I didn't, for that matter, until I read it in a magazine the other day.

MR. ELY: If you will be kind enough to subtract all the adjectives, I will do my part as well as I can.

When the Economic Club was organized, thirty years ago, coming June, Mr. A. Barten Hepburne was President of the Chase National Bank and was also President of the Chamber of Commerce. It seems appropriate that the present head of that same bank should be our guest tonight, and I therefore take pleasure in presenting Mr. Winthrop W. Aldrich, Chairman of the Board of Directors of the Chase National Bank.

Mr. Aldrich! (Applause)

Third Speaker

The Honorable Winthrop W. Aldrich

Chairman of the Board of Directors

Chase National Bank

Gentlemen: I cannot imagine a more perfect example of an anticlimax that this is, after listening to the perfectly magnificent speech of Senator Burke, and to hear the statement made by Mr. Ely which goes back to the early history of the Economic Club and is undoubtedly interesting to all of the members of the Club as a part of that history, but which has no great national interest.

I have had occasion in the last few weeks to read the debates in the Constitutional Convention and to go back to the Federalist and read the debates there on the subject of the Supreme Court and the Constitution, and I am frank to admit that I had some concern as to whether the questions

now before the country in connection with the Supreme Court issue would be dealt with in a manner that was in that tradition.

I deem it a great privilege to have been here tonight to hear the speech of Senator Burke and I can say to you, Senator Burke, coming fresh from reading those debates, that that speech in every way--the contents, the presentation, in its statesmanship and wisdom, measures up to the highest standards of the debates carried on at the time this country was formed.
But what I was going to say to you tonight was a very few words about one of my predecessors in the office of one of the high officials of the Chase National Bank, who was one of the founders of this organization, and its first President. I am not going to take the time to say to you everything that I had in mind because the hour is late and I think a great many of you here tonight knew Mr. Hepburne, and had a profound personal respect and affection for him.

I did not have that privilege myself. Therefore, nothing that I could say could add to your impression of him. He was a man who, in his youth, found it necessary to start immediately at work. He came from a Northern part of this State, he was later a representative of the State Legislature, and he was afterwards a Commissioner of Banks and Comptroller of the currency. While in the State Legislature he brought out the so called Hepburne Report, which is the foundation of legislation with regard to railroads in this Country, and is still so regarded.

He was enormously public spirited - he led the fight in the latter part of the last century for the preservation of the gold standard, and at that time became interested in financial, monetary, and economic matters, and it was that interest that led him to join with others in the formation of this club.

I happen to have a personal feeling about him, not only because I succeeded him as the Head of the Chase National but because he worked with my father for a number of years in the preparation of reports of the National Monetary commission, and in debates which took place in the organization in connection with this matter.

I deem it a great privilege to have been asked to say a few words about Mr. Hepburne, and I wish I had more time and the occasion was perhaps more appropriate for me to do so, but I am sure you feel as I do, and have the most tremendous respect and regard for his memory. (Applause)

MR. ELY: Mr. Aldrich, it fell to my lot to know Mr. Hepburne very well, indeed, and to be able to say here tonight that he permitted this new club to be a good deal of a bother to him and to make rather large encroachments on his time, and I personally feel deeply indebted to him for what he did, but still more thankful for the knowledge at first hand of what he was.

Well, now, here is Mr. Ogden Mills, who used to preside at these meetings as a President of our Club, and anybody, Mr. Mills, could, almost without knocking at your door, walk in. I, Sir, who

was the champion ignoramus of the United States, so far as I amounted to anything at all on subjects at all economic--I could come in to see you--and be, well, apparently welcome.

Once, at a meeting of this Club, the most popular speaker, I suppose, then in New York, stood up here and you were to speak afterwards, and he went for you pretty straight. His name was Al Smith. And when he finished I remember looking at Mrs. Mills in a box up yonder, and feeling a good deal of sympathy for her in view of what had happened, and you stood up hear and did a thing that I didn't suppose you could do, or anybody else--you sort of cleaned up even Al Smith, and a conservative, too. Good gracious, how do you do things like that? Mr. Mills. (Applause)

Fourth Speaker

The Honorable Ogden L. Mills

Mr. Cravath, Mr. Ely, Senator Burke, Members of the Economic Club and Guests: It is a great honor to be a guest of honor with the Club tonight on the occasion of this its thirtieth anniversary. It has been more than an honor; it has been a great privilege here tonight, when the fate of our constitutional government hangs in the balance, to hear a strong, clear voice raised in its defense and to know that men like Senator Burke are prepared to carry on the fight in behalf of American institutions.

The Senator, from what he said, I fancy has never voted the Republican ticket. I have never voted the Democratic ticket, but I say this, that I hope the next time you run for office the Republicans of Nebraska, forgetting politics, will realize what you are doing for the country.

I am an old member and an old friend of the Economic Club. I have presided at these dinners; I have spoken at these dinners, and I have just eaten and listened and, I am almost tempted to say, slept. But, seriously speaking, I think you will all agree with me that over the course of thirty years every one of these occasions has been a worthwhile experience.

Anniversaries cause us to pause and look back--and as I look back I can see a long procession of distinguished men moving across this rostrum. To recall but a few: Nelson W. Aldrich, Francis Lynn Stetson, John C. Millman, Frank B. Kellogg, Seth Low, William Howard Taft, Theodore Burke, Justice Brandies, Carter Glass, Charles Evans Hughes, Elihu Root, A. Lawrence Lowell, and Alfred E. Smith. They and many others who influenced the life of their generation, in the course of our national history, here at these dinners have made their contributions to the better understanding of public questions.

Some of the topics discussed in the past seem today, picturesquely remote--woman Suffrage, the Income Tax Amendment to the Constitution, discussed at the 12th meeting, the fortification of the Panama Canal, discussed at the 14th, and so on. On the other hand, the currency system of the United States, to which subject the members of the Club devoted the evening of February 5,

1908, is still a painfully pertinent topic. In fact, I might go so far as to say that it is a topic more painfully pertinent today that ever before in the history of this country. Taken together, I think it may be fairly said that these addresses would constitute a comprehensive contemporaneous history of our time, for the cover every major question, political and economic, in war and in peace, that we as a nation have wrestled with for a quarter of a century and more.

So you see that this organization of ours has made a distinguished contribution of a period of over 30 years, to the cause of clear thinking and public enlightenment. It is a record of which we have every right to be proud. Looking to the future I can see an even grater opportunity for public service, for in this age, when public thinking is befogged by mass and frequently misleading propaganda, emanating from even the government itself, such a forum as this is more necessary than ever--where great public questions can be discussed, frankly and fearlessly, by able, disinterested, and public-spirited men.

And, so, Mr. Cravath, and my Fellow Members of the Economic Club, I say: Long Live Robert Erskine Ely, to whose persuasive personality, indefatigable zeal, and high purpose and intelligence the real credit belong.

MR. ELY: I am not quite sure what gentleman you are referring to, but your intentions are so very kind that I am very much obliged to you.

There is one service which has been rendered by the person in a position that made him able to render it--he has had the privilege of making the members of this Club a present of an amount of time that when I once tried to reckon it up, the days stretched into weeks, and the weeks began to stretch into months, and all simply by gently pulling coat tails so that when a man had finished he might be informed of that fact.

There were other persons than you have mentioned, Mr. Mills. I wonder how many there are here who heard of the name of E.H. Harriman. As far as I am aware, he made one speech in his whole life, and that speech he had no intention of making, whatever. He came to one of the early dinners of the Economic Club and he was in a friendly mood. Perhaps that was characteristic of him--and Nicholas Murray Butler whispered in his ear and the result was he had Harriman stand up to make his first and last public speech, as far as I know. He didn't say so much about the things people wanted him to talk about, but he said "My father was a preacher, and he had quite a big barrel, and when he had a speech to make all he had to do was to go in the barrel and pull out most anything, and it was a speech."

Another time a man came here--a man who stood up in a Wild West wooly preacher's coat, a little too long for him, and buttoned straight, and we were quite sure he had never been inside evening clothes in his life. That man stood up and began to speak. Well, before he had finished we forgot what kind of a coat eh had on or whether he had any on, and didn't care. That man was Borah.

Another man thee was--he was from Virginia, and he was editing a no-account small Virginia town paper, a paper that few people read. We were discussing one of these difficult questions, and Owen of Oklahoma spoke, and Joseph Johnson gave the professorial view, and Frank Johnson stood up and made the eagle scream in great shape, and we though no more was to be said, and this Virginia hayseed, apparently a small city newspaper editor, stood up and began to talk, and nobody cared at all what he said. How could he know anything from down yonder land? His name was Carter glass, and by the time he had finished we made up our minds that he did know something.

As for the others, there are quite a lot of them, and there were some interesting things behind the scenes. There was a certain Senator from the West who had promised to address the Economic Club. Two days before the meeting he said he couldn't come. It was necessary to go to Washington and try to get it into the mind of the Senator that although he be a Senator, still, a promise should be regarded as a promise. You see, it was an awfully cheeky thing to do--I don't known how in the world--but it had to be done--the Ten Commandments will not budge, and a promise is a promise, and somebody had to say to this Senator, "See here (not quite in that tone, no, no) you were announced to speak in New York a little while ago and you didn't speak. You probably had an excellent excuse, but you didn't speak. A little while after that you were announced to speak in New York again and you didn't speak. No reason that I know of was given. That can happen twice in our town, but not three times. We expect you, Sir, and for your

own sake we expect you to come to the Hotel Astor on the day announced, to speak on the subject announced." He came.

Well you are all very kind and very nice, and I don't find that the average Wall Street man is in great respects very different from the elevator man with whom I ride up to my office every morning, and I like the elevator man pretty well, and I like all the Wall Street men I am acquainted with because I have had no personal bad experiences with any of them.

PRESIDENT CRAVATH: Those of you, who have heard Mr. Ely, can understand the success of the Economic Club. This happy occasion is ended, gentlemen. The meeting is over.

…The meeting adjourned at ten-thirty o'clock….